

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 720 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PIYUSH EXPORT INDUSTRIES

Versus

GOVERNMENT OF GUJARAT

Appearance:

MR SAURIN MEHTA for Petitioners

MR SAMIR DAVE for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 04/12/96

ORAL JUDGMENT

Heard learned counsel for the parties.

2. The petitioner No.1, a registered partnership firm, filed this petition before this Court and prayed therein for quashing and setting aside the Resolution dated 26th September 1979, annexure `B' and Resolution dated 27th February 1980, annexure `C' to this petition issued by the respondent and further prayer has been made

for declaration that the petitioner firm is entitled and eligible to get incentive benefits of cash subsidy and interest free sales tax loan as assured and announced by the respondent under its two resolutions dated 27th December 1977. The petitioner No.2 is the partner of the firm.

3. The respondent-State announced three incentive schemes for encouraging industries situated in the developing areas of the State. This scheme was as under:

- (i) The first scheme was in regard to availability of cash subsidy for expansion of the existing industrial units as well as industrial units to be set up in the developing areas of the State;
- (ii) The second scheme was in connection with the exemption from sales tax which was applicable to all new small scale industrial units commissioned on or after 1.11.1977;
- (iii) The third scheme pertained to grant of interest free sales tax loan in respect of sales tax paid on the sales of finished products.

The details of the incentive benefits to be extended has been given out in the two Resolutions of the Government dated 27th December 1977. In para 4 and 4.1 of the petition, the petitioner has given out the details of those schemes under which incentives and benefits were to be provided. The Resolution dated 26th December 1979 which is not challenged in this Special Civil Application provides that the incentives declared in the earlier Government Resolution were restricted for the cooperative sector as far as edible oil industries are concerned. Further clarification has been issued by the Government under its Resolution dated 27th February 1980 as to which oil products would fall under the purview of edible oil. The benefits of the Resolution of the year 1977 to be extended for manufacturing of groundnut oil, cotton seed oil, castor oil and vegetable Ghee were restricted only for cooperative sectors. The benefits which have been given earlier in respect of the aforesaid industries have specifically been withdrawn under the impugned Resolution. There is no dispute that the petitioner unit has begun effective steps only after Government Resolution withdrawing the incentive, which is impugned in this Special Civil Application. In view of the fact, that the petitioner unit has taken effective steps only after that Resolution, it is not entitled for any benefits extended under Resolution of the year 1977. That Resolution contains a special provision that the

Government has all powers to withdraw any incentive from any date and/or to any class of the unit. The learned counsel for the petitioner placed reliance on the decision of this Court in the case of M/s. Kothari Oil Products Co., Rajkot v. State of Gujarat, reported in 23 GLR 20 and contended that the doctrine of promissory estoppel is clearly attracted in the present case. I do not consider it to be appropriate in this case to go on this larger issue and the reason is very obvious. Incentives have to be given and provided to the petitioner in the year 1979-80 and those have not been given to it. Even in the absence of incentives and benefits the petitioner proceeded with manufacture of products in its factory. Now in case the petitioner's contention is accepted and any of these benefits and incentives are being extended and given to it, then it will amount to unjust enrichment to the petitioner. Because of these incentives the cost of petitioner's production would have been less and the benefit would have gone to the consumers and not to the petitioner, but as stated earlier, how any prejudice or any loss can be said to be caused to the petitioner because of non grant or extension of benefits and incentives under the Government Resolution of the year 1977, when in absence of those benefits and incentives the petitioner manufactured the products and marketed the same in the open market. The cost of production of those products and the profit thereon has been determined on the basis of the production cost incurred by them without there being any incentives and benefits under those Resolution and now if those benefits are given to the petitioner, certainly it will be their personal profit and not profit to the consumers. Secondly, the intention of providing these benefits and incentives is to encourage industrial development in certain areas of the State. The petitioner could have developed the industries when the incentives and benefits, declared by the State Government were not extended to it and now at this stage no benefit can be granted only on the ground that those benefits have not been given or extended to them by the Government though they were eligible for the same. To claim such benefits at this stage much more than only eligibility for the same has to be established by the petitioner. The petitioner cannot be allowed those benefits only because it was entitled for the same. In addition to that, by producing cogent and sufficient material in the form of documentary evidence, the petitioner has to establish as a fact to the satisfaction of the Court that it suffered prejudice or non extension of benefits and incentives under the Resolution of the Government of 1977 had caused to them monetary loss which they themselves

have borne out. No such material has been produced on record and as such, this Court sitting under Article 226 of the Constitution of India will not extend to the petitioner, the benefit and the incentives as prayed for merely on the abstract doctrine of eligibility.

4. Taking into consideration the totality of the facts and circumstances of the case, I do not find it to be a fit case where this Court should interfere under Article 226 of the Constitution of India. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. No order as to costs.

.....

(sunil)